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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/16/2001

Peter Melchior

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7032

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KENYON & KENYON LLP
ONE BROADWAY
NEW YORK, NY 10004

EXAMINER

MOONEYHAM, JANICE A

ART UNIT	PAPER NUMBER
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3629

MAIL DATE	DELIVERY MODE
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05/10/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/981,626

Applicant(s)

MELCHIOR ET AL.

Examiner

Janice A. Mooneyham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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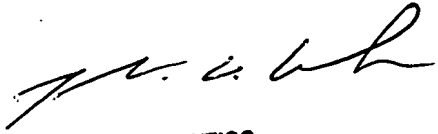
In view of the Appeal Brief filed on January 8, 2007, PROSECUTION IS
HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the
following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply
under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed
by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and
appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth
in 37 CFR 41.20 have been increased since they were previously paid, then appellant
must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by
signing below:


JOHN G. WEISS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

DETAILED ACTION

1. This is in response to the applicant's communication filed on January 8, 2007.

Claims 1-23 are currently pending.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The independent claims incorporate the limitation of "electronically evaluating whether the seller has complied with the seller's obligations as defined by the purchase order agreement as modified by any modifications".

The applicant has directed the Examiner to paragraph [0073] as providing the means for electronically evaluating. A careful reading of paragraphs [0071-0073] discloses the following:

[0071] At step 204, the trade program 112, utilizing the purchase order agreement amendment program 114, allows electronic modification of the purchase order agreement upon agreement by the seller and the buyer to the modification. Step 204 is intended to include any negotiation between the seller and the buyer with regard to the modifications (as described with reference to FIG. 4). Once modified, the purchase order agreement as modified is utilized throughout the remainder of the method 200. ***Steps 202 and 204 comprises***

the system 100 performing procurement stage functions, as disclosed in detail in the Full Service Trade System Patents and Applications.

[0072] At step 206, the trade program 112 receives and stores in the trade database 116 electronic evidence that the seller has performed in connection with fulfilling the seller's obligations as defined by the purchase order agreement as modified by any modifications. This step may represent the seller or other party entering in data to be stored in the trade database 116, such as electronic forms or documents, indicating or proving that the seller has shipped goods to the buyer, the type and quantity of the goods, etc. ***Step 206 comprises the system 100 performing fulfillment stage functions, as disclosed in detail in the Full Service Trade System Patents and Applications.***

[0073] At step 208, the trade program 112 electronically evaluates whether the seller has complied with the seller's obligations as defined by the purchase order agreement as modified by any modifications. ***Step 208 represents the trade program 112 performing compliance stage functions, as described above, including comparing the purchase order agreement to the invoice, etc., but with the trade program 112 utilizing the purchase order agreement as modified by any modifications.***

Paragraph [0074] discloses:

[0074] While steps 206 and 208 are described with reference to the seller complying the seller's obligations, it is to be understood that this may include, in some embodiments, the seller complying with a portion of the seller's obligations, such as by making a partial shipment of goods.

Thus, it is unclear what steps are necessary for evaluating compliance.

Obviously there is some sort of comparison process. However, in light of the disclosure in paragraph [0074], there is no guidance and direction in the specification as to what goes into the determination of compliance to enable one skilled in the art to make and use the applicant's invention without undue experimentation.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conklin et al. (US 6, 141,653) (hereinafter referred to as Conklin et al.) in view of Cornelius et al (7,069,234) (hereinafter referred to as Cornelius).

Referring to Claims 1 and 17:

Conklin et al. discloses a computerized method and system for facilitating the transaction in goods or services, comprising:

allowing electronic procurement of a purchase order agreement between a seller and a buyer, the purchase order agreement being stored electronically and relating to a transaction in one or more goods or services (col. 5, lines 35-40; col. 7, lines 30-41; col. 13, lines 51-63 iterative bargaining and purchasing over a network which enables buyers and sellers to negotiate prices, terms, and conditions iteratively until an agreement is reached; provides a means for storing, archiving and accessing all transactions and documents; col. 14, lines 21-26 maintains internal databases that contain a history of all transactions, Figure 11a-1 In accordance with the terms of our **Purchase Order**, Figure 18 Notification of **Purchase Order** Acceptance);

allowing electronic modification of the purchase order agreement upon agreement by the seller and the buyer to the modification (Figure 1e (244) state **changes**; col. 13, lines 51-55; col. 14, lines 27-30 provides comprehensive iterative

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bargaining abilities for both buyers and sellers that enable them to negotiate all the terms and conditions of transaction col. 24, lines 1-41 keeps track of each set of *changes* and can display them; col. 24, line 66 thru col. 26, line 18 Iterative multivariate negotiations);

receiving and storing electronic evidence that the seller has performed in connection with fulfilling the seller's obligations as defined by the purchase order agreement (Figure 1g (68) ***Deal concluded and archived***; Figure 8 (580, 585); Figures 15a- 23; Figure 30; col. 14, lines 59-62 complete histories of each stage of the negotiation processes are available for tracking and analysis which promotes non-repudiation of negotiated terms); and

evaluating whether the seller has complied with the seller's obligations as defined by the purchase order agreement as modified by any modifications (Figure 1g (68) ***Deal concluded and archived***; Figure 8 (580, 585); Figures 15a- 23; Figure 30; col. 15, lines 7-12 removing non-complaint participants; col. 27, lines 6-10 in a proposed letter of credit, such as that shown in Figure 16; the buyer's bank assumes the full credit risk and is absolutely obligated to pay the ***seller provided the seller ships goods in a way that conforms to every detail to the terms of the letter of credit***).

While Conklin et al. discloses evaluating whether the seller has complied with the seller's as defined by the purchase order agreement as modified by any modifications, Conklin et al. does not disclose that the evaluating is performed electronically.

However, Cornelius discloses electronically evaluating whether the seller has complied with the seller's obligation as defined by the purchase order agreement as modified by any modifications (Figures 23-25, 31-32 and col. 23, lines 15-55).

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate into the negotiation system and method of Conklin et al. the electronic compliance evaluation taught in Cornelius so that once the compliance engine finds all structured fields/tag are in compliance, an automatic signal is sent to the bank/buyer for payment authorization and anytime the value of the data falls outside the parameter of the structured field, it is rejected and a rejection will automatically be sent and highlighted to both buyer and seller electronically for further negotiation.

Referring to Claim 2:

Conklin et al. discloses a means for allowing electronic modification of the purchase order agreement and a means for allowing electronic negotiation between the parties relating to the modification (Figure 1e (244) state changes; col. 13, lines 51-55; col. 13, line 66 thru col. 14, line 26; col. 14, lines 27-30 provides comprehensive iterative bargaining abilities for both buyers and sellers that enable them to **negotiate all the terms and conditions** of transaction col. 24, lines 1-41 keeps track of each set of **changes** and can display them; col. 24, line 66 thru col. 26, line 18 Iterative multivariate negotiations)

Referring to Claim 3:

Conklin et al. discloses a means for allowing a communication between a plurality of sellers and buyers (col. 17, lines 14-38)

Referring to Claims 4 and 18:

Conklin et al. discloses a computerized method and system for facilitating transactions in goods or services, the method comprising:

allowing electronic procurement of a purchase order agreement between a seller and a buyer, the purchase order agreement being stored electronically and relating to a transaction in one or more goods or services (col. 5, lines 35-40; col. 7, lines 30-41; col. 13, lines 51-63 iterative bargaining and purchasing over a network which enables buyers and sellers to negotiate prices, terms, and conditions iteratively until an agreement is reached; provides a means for storing, archiving and accessing all transactions and documents; col. 14, lines 21-26 maintains internal databases that contain a history of all transactions, Figure 11a-1 In accordance with the terms of our Purchase Order; Figure 18 Notification of Purchase Order Acceptance);

allowing electronic modification of the purchase order agreement upon agreement by the seller and the buyer to the modification (Figure 1e (244) state changes; col. 13, lines 51-55; col. 14, lines 27-30 provides comprehensive iterative bargaining abilities for both buyers and sellers that enable them to negotiate all the terms and conditions of transaction col. 24, lines 1-41 keeps track of each set of changes and can display them; col. 24, line 66 thru col. 26, line 18 Iterative multivariate negotiations);

receiving and storing electronic evidence that the seller has performed in connection with fulfilling the seller's obligations as defined by the purchase order agreement (Figure 1g (68) Deal concluded and archived; Figure 8 (580, 585); Figures

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15a- 23; Figure 30; col. 14, lines 59-62 complete histories of each state of the negotiation processes are available for tracking and analysis which promotes non-repudiation of negotiated terms);

evaluating whether the seller has complied with the seller's obligations as defined by the purchase order agreement (Figure 1g (68) Deal concluded and archived; Figure 8 (580, 585); Figures 15a- 23; Figure 30; col. 15, lines 7-12 removing non-complaint participants; col. 27, lines 6-10 in a proposed letter of credit, such as that shown in Figure 16, the buyer's bank assumes the full credit risk and is absolutely obligated to pay the seller provided the seller ships goods in a way that conforms to every detail to the terms of the letter of credit);

electronically providing a payment instruction if the seller has been evaluated to have complied with the seller's obligation as defined by the purchase order agreement (Figure 17, Figure 30; col. 26, line 65 thru col. 27, line 31); and

receiving and storing electronic evidence that the buyer has made one or more payments in connection with fulfilling buyer's obligations as defined by the purchase order agreement as modified by any modifications (Figure 30, col. 26, lines 65 thru col. 27, documentary collection payment methods, purchase order payment methods, procurement cards and similar methods can be used and negotiated using this invention; col. 6, lines 20-21).

While Conklin et al. discloses evaluating whether the seller has complied with the seller's as defined by the purchase order agreement as modified by any modifications, Conklin et al. does not disclose that the evaluating is performed electronically.

However, Cornelius discloses electronically evaluating whether the seller has complied with the seller's obligation as defined by the purchase order agreement as modified by any modifications (Figures 23-25, 31-32 and col. 23, lines 15-55).

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate into the negotiation system and method of Conklin et al. the electronic compliance evaluation taught in Cornelius so that once the compliance engine finds all structured fields/tag are in compliance, an automatic signal is sent to the bank/buyer for payment authorization and anytime the value of the data falls outside the parameter of the structured field, it is rejected and a rejection will automatically be sent and highlighted to both buyer and seller electronically.

Referring to Claims 5-6:

Conklin et al. discloses a means for allowing negotiation between the parties and means for allowing modifications (col. 14, lines 27-31 provides comprehensive iterative bargaining abilities; col. 17, lines 14-38; col. 24, lines 1-22 keeps track of each set of changes).

Referring to Claims 7-9:

Conklin et al. discloses a means for storing electronic records (col. 14, lines 21-26).

Referring to Claim 10:

Conklin et al. discloses a means for allowing determining the different rights of the parties (col. 25, lines 12-20 deciding entity; col. 32, lines 25-61).

Referring to Claims 11-12:

Conklin et al. discloses a means for evaluating payment criteria, means for evaluating credit exposure, and means for providing payment guarantee (col. 4, line 51 thru col. 7, line 45; col. 25, lines 56-59, col. 26, line 65 thru col. 27, line 31).

Referring to Claim 13:

Conklin discloses a means for determining compliance with obligations (Figure 1g (68) Deal concluded and archived; Figure 8 (580, 585); Figures 15a- 23; Figure 30; col. 15, lines 7-12 removing non-complaint participants; col. 27, lines 6-10 in a proposed letter of credit, such as that shown in Figure 16, the buyer's bank assumes the full credit risk and is absolutely obligated to pay the seller provided the seller ships goods in a way that conforms to every detail to the terms of the letter of credit).

Referring to Claims 14 and 19:

Conklin et al. discloses computerized method and system for facilitating transactions in goods or services, the method comprising:

allowing electronic procurement of a purchase order agreement between a seller and a buyer, the purchase order agreement being stored electronically and relating to a transaction in one or more goods or services (col. 5, lines 35-40; col. 7, lines 30-41; col. 13, lines 51-63 iterative bargaining and purchasing over a network which enables buyers and sellers to negotiate prices, terms, and conditions iteratively until an agreement is reached; provides a means for storing, archiving and accessing all transactions and documents; col. 14, lines 21-26 maintains internal databases that

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contain a history of all transactions, Figure 11a-1 In accordance with the terms of our Purchase Order; Figure 18 Notification of Purchase Order Acceptance);

allowing electronic negotiations between the seller and the buyer relating to establishing the purchase order agreement (col. 13, lines 51-55; col. 24, lines 1-17; col. 24, line 66 thru col. 26, line 18 iterative multivariate negotiations).

allowing electronic modification of the purchase order agreement upon agreement by the seller and the buyer to the modification (Figure 1e (244) state changes; col. 13, lines 51-55; col. 14, lines 27-30 provides comprehensive iterative bargaining abilities for both buyers and sellers that enable them to negotiate all the terms and conditions of transaction col. 24, lines 1-41 keeps track of each set of changes and can display them; col. 24, line 66 thru col. 26, line 18 Iterative multivariate negotiations);

receiving and storing electronic evidence that the seller has performed in connection with fulfilling the seller's obligations as defined by the purchase order agreement (Figure 1g (68) Deal concluded and archived; Figure 8 (580, 585); Figures 15a- 23; Figure 30; col. 14, lines 59-62 complete histories of each state of the negotiation processes are available for tracking and analysis which promotes non-repudiation of negotiated terms);

evaluating whether the seller has complied with the seller's obligations as defined by the purchase order agreement (Figure 1g (68) Deal concluded and archived; Figure 8 (580, 585); Figures 15a- 23; Figure 30; col. 15, lines 7-12 removing non-complaint participants; col. 27, lines 6-10 in a proposed letter of credit, such as that shown in

Figure 16, the buyer's bank assumes the full credit risk and is absolutely obligated to pay the seller provided the seller ships goods in a way that conforms to every detail to the terms of the letter of credit).

While Conklin et al. discloses evaluating whether the seller has complied with the seller's as defined by the purchase order agreement as modified by any modifications, Conklin et al. does not disclose that the evaluating is performed electronically.

However, Cornelius discloses electronically evaluating whether the seller has complied with the seller's obligation as defined by the purchase order agreement as modified by any modifications (Figures 23-25, 31-32 and col. 23, lines 15-55).

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate into the negotiation system and method of Conklin et al. the electronic compliance evaluation taught in Cornelius so that once the compliance engine finds all structured fields/tag are in compliance, an automatic signal is sent to the bank/buyer for payment authorization and anytime the value of the data falls outside the parameter of the structured field, it is rejected and a rejection will automatically be sent and highlighted to both buyer and seller electronically.

Referring to Claims 15, 20, 22-23:

Conklin et al. discloses a computerized method and system for facilitating transactions in goods or services, the method comprising:

allowing electronic procurement of a purchase order agreement between a seller and a buyer, the purchase order agreement being stored electronically and relating to a transaction in one or more goods or services (col. 5, lines 35-40; col. 7, lines 30-41; col.

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13, lines 51-63 iterative bargaining and purchasing over a network which enables buyers and sellers to negotiate prices, terms, and conditions iteratively until an agreement is reached; provides a means for storing, archiving and accessing all transactions and documents; col. 14, lines 21-26 maintains internal databases that contain a history of all transactions, Figure 11a-1 In accordance with the terms of our Purchase Order; Figure 18 Notification of Purchase Order Acceptance);

allowing electronic negotiations between the seller and the buyer relating to establishing the purchase order agreement (col. 13, lines 51-55; col. 24, lines 1-17; col. 24, line 66 thru col. 26, line 18);

allowing electronic modification of the purchase order agreement upon agreement by the seller and the buyer to the modification (Figure 1e (244) state changes; col. 13, lines 51-55; col. 14, lines 27-30 provides comprehensive iterative bargaining abilities for both buyers and sellers that enable them to negotiate all the terms and conditions of transaction col. 24, lines 1-41 keeps track of each set of changes and can display them; col. 24, line 66 thru col. 26, line 18 Iterative multivariate negotiations);

receiving and storing electronic evidence that the seller has performed in connection with fulfilling the seller's obligations as defined by the purchase order agreement (Figure 1g (68) Deal concluded and archived; Figure 8 (580, 585); Figures 15a- 23; Figure 30; col. 14, lines 59-62 complete histories of each state of the negotiation processes are available for tracking and analysis which promotes non-repudiation of negotiated terms);

evaluating whether the seller has complied with the seller's obligations as defined by the purchase order agreement (Figure 1g (68) Deal concluded and archived; Figure 8 (580, 585); Figures 15a- 23; Figure 30; col. 15, lines 7-12 removing non-complaint participants; col. 27, lines 6-10 in a proposed letter of credit, such as that shown in Figure 16, the buyer's bank assumes the full credit risk and is absolutely obligated to pay the seller provided the seller ships goods in a way that conforms to every detail to the terms of the letter of credit);

electronically providing a payment instruction if the seller has been evaluated to have complied with the seller's obligation as defined by the purchase order agreement (Figure 17, Figure 30; col. 26, line 65 thru col. 27, line 31); and

receiving and storing electronic evidence that the buyer has made on or more payments in connection with fulfilling buyer's obligations as defined by the purchase order agreement as modified by any modifications (Figure 30, col. 26, lines 65 thru col. 27, documentary collection payment methods, purchase order payment methods, procurement cards and similar methods can be used and negotiated using this invention).

While Conklin et al. discloses evaluating whether the seller has complied with the seller's as defined by the purchase order agreement as modified by any modifications, Conklin et al. does not disclose that the evaluating is performed electronically.

However, Cornelius discloses electronically evaluating whether the seller has complied with the seller's obligation as defined by the purchase order agreement as modified by any modifications (Figures 23-25, 31-32 and col. 23, lines 15-55).

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate into the negotiation system and method of Conklin et al. the electronic compliance evaluation taught in Cornelius so that once the compliance engine finds all structured fields/tag are in compliance, an automatic signal is sent to the bank/buyer for payment authorization and anytime the value of the data falls outside the parameter of the structured field, it is rejected and a rejection will automatically be sent and highlighted to both buyer and seller electronically.

Referring to Claim 21:

Conklin et al. discloses wherein allowing the electronic negotiation comprises:

allowing a first one of the seller and the buyer to communication to a second one of a seller and a buyer a first proposed purchase order (Figure 3; Figure 9);

allowing the second one of the seller and the buyer to electronically communicate to the first one of the seller and the buyer an action selected from the group of accepting the first proposed purchase order, declining the first proposed purchase order, communicating the second one of the buyer and the seller a second proposed purchase order, the second proposed purchase order being created by the second one of the seller and the buyer by electronically modifying the first proposed purchase order (col. 5, lines 35-40; col. 7, lines 30-41; col. 13, lines 61-63; col. 14, lines 21-26); and

establishing and storing electronically a purchase order agreement in accordance with any purchase order that has been proposed by the first one of the seller and the buyer and accepted by the second one of the seller and the buyer and to establish and store electronically a purchase order agreement in accordance with any purchase order

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that has been proposed by the second one of the seller and the buyer and accepted by the first one of the seller and the buyer (col. 13, line 66 thru col. 14, line 26).

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1, 4, 11-15, 17-20, 22 and 23 are provisionally rejected on the ground of nonstatutory double patenting over claims 1,2, 17-19, and 25-27 of copending Application No. 09/981642; claims 1-3, 19-21, and 34-37 of copending Application No. 09/981645; and claims 1, 5, 21-23, 26, and 29 of copending Application No. 09/981637." This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending

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application since the referenced copending application and the instant application are claiming common subject matter, as follows:

means for allowing electronic procurement of a purchase order agreement between a seller and a buyer and relating to a transaction in one or more goods, and for electronically storing the purchase order agreement;

means for receiving and storing electronic evidence that the seller has performed in connection with fulfilling the seller's obligations as defined by the purchase order agreement;

means for electronically evaluating whether the seller has complied with the seller's obligations as defined by the purchase order agreement;

means for the system evaluating whether a first set of payment guarantee criteria are met,

means for, if the first set of payment guarantee criteria are evaluated to be met, the system providing a payment guarantee to the seller to guarantee payment by the buyer in connection with the purchase order agreement;

means for electronically providing a payment instruction if the seller has been evaluated to have complied with the seller's obligations as defined by the purchase order agreement comprises means for electronically providing a payment instruction if the seller has been evaluated to have complied with the at least a portion of the seller's obligations as defined by the purchase order agreement; and

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means for receiving and storing electronic evidence that the buyer has made one or more payments in connection with fulfilling buyer's obligations as defined by the purchase order agreement.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Response to Arguments

5. Applicant's arguments filed January 8, 2007 have been fully considered but they are not persuasive.

Applicant's arguments are that Conklin et al. fails to disclose means for /step of electronically evaluating whether the seller has complied with the seller's obligations as defined by the purchase order agreement as modified by any modifications. The argument is now moot in view of the new grounds of rejection.

Conclusion

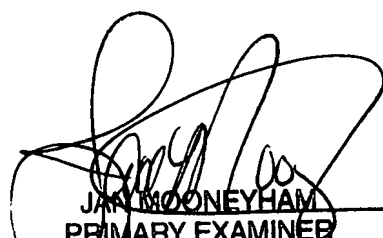
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Tozzoli et al (US Patent 5,717,989) discloses a means for allowing electronic procurement of a purchase order agreement, means for receiving electronic evidence, and a means for electronically evaluating whether the seller has complied with the seller's obligation as defined by the purchase order agreement.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janice A. Mooneyham whose telephone number is (571) 272-6805. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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